



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R08-OAR-2017-0171; FRL-9963-21-Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule, the Environmental Protection Agency (EPA) is taking action to approve the negative declarations for several designated facility classes in various states of Region 8. First, the EPA is taking direct final action in approving the negative declarations for small municipal waste combustor (MWC) units submitted by the states of Colorado, Montana, North Dakota, South Dakota, and Wyoming. Second, the EPA is taking direct final action in approving the negative declarations for large MWC units submitted by the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Third, the EPA is taking direct final action in approving the negative declarations for commercial industrial solid waste incineration (CISWI) units submitted by the states of Montana, South Dakota, Utah, and Wyoming. Fourth, the EPA is taking direct final action in approving the negative declarations for other solid waste incineration (OSWI) units submitted by the states of Montana, North Dakota, South Dakota, Utah, and Wyoming. Each state included in this action has notified the EPA in a letter of negative declaration that there are no existing designated facilities, of the source category specified in each particular letter of negative declaration, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA or the “Act”) currently operating within the

jurisdictional boundaries of their state. The EPA is accepting the negative declarations in accordance with sections 111(d) and 129(b) of the Act. This is a direct final action without prior notice and comment because the action is deemed noncontroversial.

DATES: This direct final rule is effective on [Insert date 60 days after date of publication in the FEDERAL REGISTER] without further notice, unless the EPA receives adverse written comments on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER]. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R08-OAR-2017-0171** at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregory Lohrke, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6396, lohrke.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Using a Direct Final Rule?

The EPA is publishing this rule without prior proposal because the agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of today's Federal Register publication, the EPA is publishing a separate document that will serve as the proposal to publish the negative declarations should relevant adverse comments be filed. This rule will be effective [Insert date 60 days after date of publication in the FEDERAL REGISTER] without further notice unless the agency receives relevant adverse comments by [Insert date 30 days after date of publication in the FEDERAL REGISTER].

If the EPA receives adverse comments, the EPA will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Background

The EPA's statutory authority for regulating new and existing solid waste incineration units is outlined in CAA sections 111 and 129. Section 129 of the Act is specific to solid waste combustion, and requires the EPA to establish performance standards for each category of solid waste incineration units, which includes the categories addressed in today's notice. Section 111(b) of the Act gives the EPA the statutory authority to promulgate new source performance

standards (NSPS) for new incineration units. Section 111(d) requires states to submit plans to control designated pollutants at existing incineration facilities (designated facilities) whenever standards of performance have been established under section 111(b) and the EPA has established emission guidelines for existing designated facilities. Emission guidelines are implemented and enforced by state pollution control agencies through these EPA-approved section 111(d)/129 state plans or a promulgated federal plan adopted by the state. If a state does not have any existing solid waste incineration units for the relevant emission guidelines, the state shall submit a letter to the EPA certifying that no such units exist within the state (i.e., negative declaration) in lieu of a state plan.

Emission guidelines for small MWC units were originally promulgated alongside guidelines for large MWC units in December 1995 (40 CFR part 60, subpart Cb). These guidelines were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997 when the court held that the EPA should separately regulate small MWC units to remain consistent with the provisions of section 129 of the CAA. On December 6, 2000, the EPA issued a final rule (65 FR 76378) to reestablish emission guidelines and compliance times for existing small MWC units constructed on or before August 30, 1999, that have capacities of 35 to 250 tons per day of municipal solid waste (40 CFR part 60, subpart BBBB). The federal plan was promulgated on January 31, 2003 (68 FR 5144), at 40 CFR part 62, subpart JJJ.

In December 1995, the EPA adopted NSPS (40 CFR part 60, subpart Eb) and emission guidelines (40 CFR part 60, subpart Cb) for large MWC units. The EPA conducted a five-year review of the NSPS and emission guidelines for large MWC units as required by section 129(a)(5) of the CAA and proposed amendments on December 19, 2005 (70 FR 75348). On May 10, 2006, after consideration of comments received on this proposal, revisions and amendments

to the emission guidelines and compliance times for large MWC units were promulgated at 40 CFR part 60, subpart Cb (71 FR 27323).

On February 7, 2013, revision of the emission guidelines and compliance times for commercial and industrial solid waste incineration units was adopted and promulgated (78 FR 9112) at 40 CFR part 60, subpart DDDD. Reconsideration of certain aspects of the final rule due to public comment resulted in minor amendments to the CISWI rule being made on June 23, 2016. On October 3, 2003, the EPA promulgated the federal plan for CISWI units that commenced construction on or before November 30, 1999 (68 FR 57539) at 40 CFR part 62, subpart III.

On December 16, 2005, emission guidelines and compliance times were promulgated for existing other solid waste incineration units that commenced construction on or before December 9, 2004 (70 FR 74907) at 40 CFR part 60, subpart FFFF. Reconsideration of certain aspects of the final rule resulted in minor amendments to the OSWI rule being made on January 22, 2007.

III. State Submittals

A. Existing Small Municipal Waste Combustion Units Negative Declarations from the States of Colorado, Montana, North Dakota, South Dakota, and Wyoming

The Colorado Department of Public Health and Environment, the Montana Department of Environmental Quality, the North Dakota Department of Health, the South Dakota Department of Environment and Natural Resources, and the Wyoming Department of Environmental Quality have submitted letters certifying that there are no existing small municipal waste combustion units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart BBBB. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under

subpart BBBB – Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999. The dates of submission for these letters are outlined in the table below.

State agency submitting the negative declaration	Date of letter to EPA Region 8 Office
Colorado Department of Public Health and Environment	January 8, 2001
Montana Department of Environmental Quality	June 27, 2005
North Dakota Department of Health	November 27, 2001
South Dakota Department of Environment and Natural Resources	January 25, 2002
Wyoming Department of Environmental Quality	October 9, 2001

B. Existing Large Municipal Solid Waste Combustion Units Continued Negative Declarations from the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

The Colorado Department of Public Health and Environment, the Montana Department of Environmental Quality, the North Dakota Department of Health, the South Dakota Department of Environment and Natural Resources, the Utah Department of Environmental Quality, and the Wyoming Department of Environmental Quality have submitted letters continuing their certification that there are no existing large municipal solid waste combustion units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart Cb. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under 40 CFR part 60, subpart Cb – Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are

Constructed on or Before September 20, 1994. The dates of submission for these letters are outlined in the table below.

State agency submitting the negative declaration	Date of letter to EPA Region 8 Office
Colorado Department of Public Health and Environment	October 13, 2015
Montana Department of Environmental Quality	March 18, 2015
North Dakota Department of Health	February 26, 2015
South Dakota Department of Environment and Natural Resources	April 3, 2017
Utah Department of Environmental Quality	March 22, 2017
Wyoming Department of Environmental Quality	April 23, 2015

C. Existing Commercial Industrial Solid Waste Incineration Units Continued Negative
Declarations from the States of Montana, South Dakota, Utah, and Wyoming

The Montana Department of Environmental Quality, the South Dakota Department of Environment and Natural Resources, the Utah Department of Environmental Quality, and the Wyoming Department of Environmental Quality have submitted letters continuing their certification that there are no existing commercial industrial solid waste incineration units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart DDDD. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under 40 CFR part 60, subpart DDDD – Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units. The dates of submission for these letters are outlined in the table below.

State agency submitting the negative declaration	Date of letter to EPA
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	Region 8 Office
Montana Department of Environmental Quality	March 18, 2015
South Dakota Department of Environment and Natural Resources	April 3, 2017
Utah Department of Environmental Quality	March 22, 2017
Wyoming Department of Environmental Quality	February 23, 2017

D. Existing Other Solid Waste Incineration Units Negative Declarations from the States of Montana, North Dakota, South Dakota, Utah, and Wyoming

The Montana Department of Environmental Quality, the North Dakota Department of Health, the South Dakota Department of Environment and Natural Resources, the Utah Department of Environmental Quality, and the Wyoming Department of Environmental Quality have submitted letters certifying that there are no existing other solid waste incineration units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart FFFF. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under 40 CFR part 60, subpart FFFF – Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004. The dates of submission for these letters are outlined in the table below.

State agency submitting the negative declaration	Date of letter to EPA Region 8 Office
Montana Department of Environmental Quality	March 18, 2015
North Dakota Department of Health	September 20, 2006
South Dakota Department of Environment and Natural Resources	May 4, 2007

Utah Department of Environmental Quality	December 20, 2006
Wyoming Department of Environmental Quality	May 3, 2007

IV. Final Action

The EPA is approving the negative declarations for existing small MWC units for the states of Colorado, Montana, North Dakota, South Dakota, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

The EPA is also approving the updated negative declarations for existing large MWC units for the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

The EPA is also publishing the updated negative declarations for existing CISWI units for the states of Montana, South Dakota, Utah, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

The EPA is also approving the negative declarations for existing OSWI units for the states of Montana, North Dakota, South Dakota, Utah, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

V. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a section 111(d)/129 plan submission that complies with the provisions of the Act and applicable federal regulations at 40 CFR 62.04. Thus, in reviewing section 111(d)/129 plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would

be inconsistent with the CAA; and,

- Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

In addition, this rule is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and it shall not postpone the effectiveness of such rule or action. Under CAA section

307(b)(2), this action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial industrial solid waste incineration, Intergovernmental relations, Municipal solid waste combustion, Other solid waste incineration, Reporting and recordkeeping requirements.

Dated: May 12, 2017.

Suzanne J. Bohan,
Acting Regional Administrator,
Region 8.

For the reasons stated in the preamble, EPA amends 40 CFR part 62 as set forth below:

**PART 62 - APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart G-Colorado

2. Revise § 62.1370 to read as follows:

§ 62.1370 Identification of plan-negative declaration.

Letter from the Colorado Department of Public Health and Environment submitted October 13, 2015, certifying that there are no existing large municipal waste combustion units within the State of Colorado that are subject to 40 CFR part 60, subpart Cb.

3. Subpart G is amended by adding an undesignated center heading and § 62.1400 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.1400 Identification of plan-negative declaration.

Letter from the Colorado Department of Public Health and Environment submitted January 8, 2001, certifying that there are no existing small municipal waste combustion units within the State of Colorado that are subject to 40 CFR part 60, subpart BBBB.

Subpart BB-Montana

4. Revise § 62.6620 to read as follows:

§ 62.6620 Identification of plan-negative declaration.

Letter from the Montana Department of Environmental Quality submitted March 18, 2015, certifying that there are no existing large municipal waste combustion units within the State of Montana that are subject to 40 CFR part 60, subpart Cb.

5. Revise § 62.6630 to read as follows:

§ 62.6630 Identification of plan-negative declaration.

Letter from the Montana Department of Environmental Quality submitted March 18, 2015, certifying that there are no existing commercial and industrial solid waste incineration units within the State of Montana that are subject to 40 CFR part 60, subpart DDDD.

6. Subpart BB is amended by adding an undesignated center heading and § 62.6650 followed by an undesignated center heading and § 62.6660 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.6650 Identification of plan-negative declaration.

Letter from the Montana Department of Environmental Quality submitted June 27, 2005, certifying that there are no existing small municipal waste combustion units within the State of Montana that are subject to 40 CFR part 60, subpart BBBB.

Emissions From Existing Other Solid Waste Incineration Units

§ 62.6660 Identification of plan-negative declaration.

Letter from the Montana Department of Environmental Quality submitted March 18, 2015, certifying that there are no existing other solid waste incineration units within the State of Montana that are subject to 40 CFR part 60, subpart FFFF.

Subpart JJ-North Dakota

7. Revise § 62.8620 to read as follows:

§ 62.8620 Identification of plan-negative declaration.

Letter from the North Dakota Department of Health submitted February 26, 2015, certifying that there are no existing large municipal waste combustion units within the State of North Dakota that are subject to 40 CFR part 60, subpart Cb.

8. Subpart JJ is amended by adding an undesignated center heading and § 62.8650 followed by an undesignated center heading and § 62.8660 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.8650 Identification of plan-negative declaration.

Letter from the North Dakota Department of Health submitted November 27, 2001, certifying that there are no existing small municipal waste combustion units within the State of North Dakota that are subject to 40 CFR part 60, subpart BBBB.

Emissions From Existing Other Solid Waste Incineration Units

§ 62.8660 Identification of plan-negative declaration.

Letter from the North Dakota Department of Health submitted September 20, 2006, certifying that there are no existing other solid waste incineration units within the State of North Dakota that are subject to 40 CFR part 60, subpart FFFF.

Subpart QQ-South Dakota

9. Revise § 62.10370 to read as follows:

§ 62.10370 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted April 3, 2017, certifying that there are no existing large municipal waste combustion units within the State of South Dakota that are subject to 40 CFR part 60, subpart Cb.

10. Revise § 62.10380 to read as follows:

§ 62.10380 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted April 3, 2017, certifying that there are no existing commercial and industrial solid waste incineration units within the State of South Dakota that are subject to 40 CFR part 60, subpart DDDD.

11. Subpart QQ is amended by adding an undesignated center heading and § 62.10400 followed by an undesignated center heading and § 62.10410 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.10400 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted January 25, 2002, certifying that there are no existing small municipal waste combustion units within the State of South Dakota that are subject to 40 CFR part 60, subpart BBBB.

Emissions From Existing Other Solid Waste Incineration Units

§ 62.10410 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted May 4, 2007, certifying that there are no existing other solid waste incineration units within the State of South Dakota that are subject to 40 CFR part 60, subpart FFFF.

Subpart TT-Utah

12. Revise § 62.11130 to read as follows:

§ 62.11130 Identification of plan-negative declaration.

Letter from the Utah Department of Environmental Quality submitted March 22, 2017, certifying that there are no existing large municipal waste combustion units within the State of Utah that are subject to 40 CFR part 60, subpart Cb.

13. Revise § 62.11140 to read as follows:

§ 62.11140 Identification of plan-negative declaration.

Letter from the Utah Department of Environmental Quality submitted March 22, 2017, certifying that there are no existing commercial and industrial solid waste incineration units within the State of Utah that are subject to 40 CFR part 60, subpart DDDD.

14. Subpart TT is amended by adding an undesignated center heading and § 62.11160 to read as follows:

Emissions From Existing Other Solid Waste Incineration Units

§ 62.11160 Identification of plan-negative declaration.

Letter from the Utah Department of Environmental Quality submitted December 20, 2006, certifying that there are no existing other solid waste incineration units within the State of Utah that are subject to 40 CFR part 60, subpart FFFF.

Subpart ZZ-Wyoming

15. Revise § 62.12620 to read as follows:

§ 62.12620 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted April 23, 2015, certifying that there are no existing large municipal waste combustion units within the State of Utah that are subject to 40 CFR part 60, subpart Cb.

16. Revise § 62.12630 to read as follows:

§ 62.12630 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted February 23, 2017, certifying that there are no existing commercial and industrial solid waste incineration units within the State of Wyoming that are subject to 40 CFR part 60, subpart DDDD.

17. Subpart ZZ is amended by adding an undesignated center heading and § 62.12650, followed by an undesignated center heading and § 62.12660 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.12650 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted October 9, 2001, certifying that there are no existing small municipal waste combustion units within the State of Wyoming that are subject to 40 CFR part 60, subpart BBBB.

Emissions From Existing Other Solid Waste Incineration Units

§ 62.12660 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted May 3, 2007, certifying that there are no existing other solid waste incineration units within the State of Wyoming that are subject to 40 CFR part 60, subpart FFFF.

[FR Doc. 2017-11576 Filed: 6/2/2017 8:45 am; Publication Date: 6/5/2017]